

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons which follow.

Claims 1-23 are now pending in this application. Claims 1-23 stand rejected under 35 U.S.C. §103(a). The specification and claims have not been changed by this amendment.

The office action of June 17, 2003 and the reference cited therein has been considered. In response to the rejections to the claims, the Applicants provide declarations attached hereto and incorporated herein by this reference. As demonstrated, each of the rejections is believed overcome with the application being placed in condition for allowance. Accordingly, reconsideration and allowance of this application is respectfully requested.

On page 2, paragraph 2 of the office action, the Examiner has rejected claims 1-23 under 35 U.S.C. §103(a) as being unpatentable over Skalla, et al (USPN: 6,367,606) and prior art cited by the Applicants. In response, Applicants have enclosed herewith a Declaration under 37 C.F.R. §1.131 with attached Exhibits from Scott Steckling, one of the inventors in the present application and a Declaration under 37 C.F.R. §1.131 with attached Exhibits from Daniel R. Egan, a test technician and employee of Oshkosh Truck Corporation. These documents established that Applicants' invention was reduced to practice prior to the October 15, 1999 filing date of the provisional application from which the Skalla patent relies on priority.

Further, the attached Declarations establish that the Applicants were diligent from the time of conception to reduction to practice of the subject matter of the present application for the Discharge Chute for Concrete disclosed and claimed in the present application.

In a telephone interview with Examiner Schapiro, on October 8, 2003, the undersigned and Examiner Schapiro discussed the Examiner's comments in the June 17, 2003 office action. The attached Declarations address the concerns of the Examiner by providing the Declaration of the test technician, Dan Egan, confirming the timing of tests of the concept disclosed and claimed in the present application and the Declaration of Scott Steckling of the

continued development of the concrete chute which is disclosed and claimed in the present application.

In addition, the attached Declaration establishes that Skalla was not the inventor of the concrete chute disclosed and claimed in the prior art patent (USPN: 6,367,606) cited in the 35 U.S.C. §103(a) rejection.

Accordingly, the Skalla reference cannot be used to support this rejection. Based upon the facts of record, the timing of the filing and issuance of Skalla does not qualify it as prior art for purposes of 35 U.S.C. §102 or §103. Therefore, Applicants respectfully request that the Examiner withdraw his rejection of claims 1, 11 and 20 as well as claims 2 – 10, 12 – 19, and 21 – 23 which depend either directly or indirectly from the above cited, respective, independent claims.

Applicants have overcome the rejection of the claims of the present application but with the intent of not limiting the scope of the invention protection afforded by the patent laws and these claims any further than absolutely necessary. Accordingly, the terms of these claims should be interpreted as broad as permitted by the prior art to provide for full protection for Applicants' invention under 35 U.S.C. §271. It is respectfully submitted that each of the outstanding rejections has now been overcome and that each claim is in condition for allowance. Reconsideration under 37 C.F.R. §1.111 and §1.112 is respectfully requested.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to

Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 12-16-03

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